

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

=====x  
ROSALIE SOLLER and DAVE KENNETH SOLLER,

Plaintiffs,  
-against-

Badge #5972, John Doe (2<sup>nd</sup> Policeman), Road Supervisor  
#43G, Social Services Representative, Suffolk County Police  
Department, Suffolk County Police Department, Suffolk  
County Police Dept – Chief Executive, County of Suffolk  
executive, County of Suffolk and Town of Smithtown,  
Defendants.

=====x  
**ANSWER TO SECOND  
AMENDED COMPLAINT**

**CV 12-0167 (SJF)(WDW)**

**Jury Trial Demanded**

Defendants, SUFFOLK COUNTY POLICE DEPARTMENT, The SUFFOLK  
COUNTY EXECUTIVE, and the COUNTY OF SUFFOLK. by their attorney, DENNIS M.  
COHEN, Suffolk County Attorney, by Susan A. Flynn, Assistant County Attorney, answering  
the plaintiffs' Second Amended Complaint herein, respectfully alleges as follows:

1. Defendants deny the operative allegations of wrongdoing set forth in the pro-se  
form Complaint, with attachments, including but not limited to those set forth in the paragraphs  
numbered "III" of the Second Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

2. That the Second Amended Complaint fails to state a claim upon which relief can  
be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

3. That the damages sustained by plaintiffs, if any, were caused by the plaintiffs own  
culpable and/or negligent conduct.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

4. That the complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or other basis for a civil rights claim.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

5. That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by defendant or otherwise ratified by defendant authorized a deprivation of plaintiff's constitutional rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

6. That no custom or usage adopted, followed, endorsed or ratified by defendant authorized a deprivation of plaintiff's constitutional rights.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

7. That this Court lacks subject matter jurisdiction.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

8. That this Court lacks jurisdiction over the person of defendant Suffolk County Executive.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

9. That each defendant's actions, if any, were justified by the facts and circumstances presented.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

10. That the defendants, at all times complained of, acted reasonably and in good faith in the discharge of their official duties and responsibilities.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

11. To the extent that the Second Amended Complaint purports to set forth any pendent state law claims, they are barred by the plaintiff's failure to serve a timely Notice of Claim .

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

12. That each defendant acted in what he did solely pursuant to his duties and responsibilities as a law enforcement and/or prosecuting official.

13. That each defendant at all times acted in good faith in that he reasonably believed that he was exercising and acting within his statutory and constitutional powers.

14. That in performing such duties and responsibilities, each defendant is and was protected by absolute and/or qualified Federal and/or State immunity.

WHEREFORE, defendants demand judgment against the plaintiffs dismissing the Second Amended Complaint, together with the costs and disbursements of this action, and such other and further relief as this Court deems just and proper.

Dated: Hauppauge, New York  
July 16, 2012

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Executive and County of Suffolk  
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By: \_\_\_\_\_  
Susan A. Flynn  
Assistant County Attorney

To:

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